

**REPORT - PLANNING COMMISSION MEETING  
November 21, 2002**

**Project Name and Number:** Marlais General Plan Amendment (PLN2002-00100)

**Applicant:** Richard Marlais

**Proposal:** Appeal of staff's determination that a historical evaluation is required in order to complete the Initial Study for a proposed General Plan Amendment.

**Recommended Action:** Deny appeal

**Location:** 43352, 43360, 43364 Mission Boulevard in the Mission San Jose Planning Area

**Assessor Parcel Number(s):** 513-380-6

**Area:** One acre

**Owner:** Richard Marlais

**Environmental Review:** Application for environmental review has been made

**Existing General Plan:** Community Commercial; Historic Resource

**Existing Zoning:** P-2001-34 Planned District

**Existing Land Use:** Several residential structures and assorted accessory buildings.

**Public Hearing Notice:** Public hearing notification is applicable. A total of 35 notices were mailed to owners and occupants of property within 300 feet of the site on the following streets: Mission Boulevard, Ellsworth Street, and Washington Boulevard. The notices to owners and occupants were mailed on November 8, 2002. A Public Hearing Notice was delivered to The Argus on November 6, 2002 to be published by November 11, 2002

**Executive Summary:** Upon review of the proposed General Plan Amendment, staff determined a historical assessment of the existing buildings on the site is required to provide information to complete the environmental analysis required for the General Plan Amendment and future development of the site. The applicant is appealing the requirement for a historical analysis.

**Background:** On October 9, 2001 the applicant applied for a General Plan Amendment to allow the development of single family homes and a medical office building on property at 43360 Mission Boulevard. Upon receipt of the application, staff undertook the required initial environmental assessment under the California Environmental Quality Act ("CEQA") set forth in the California Public Resources Code, and the CEQA Guidelines set forth in the California Code of Regulations. Specifically, CEQA Guidelines section 15063 requires the City to conduct an "Initial Study" to determine whether or not the proposed project may have a significant effect on the environment. One such potential significant effect on the environment is an impact on historical resources (as outlined in more detail below). CEQA Guidelines section 15063 authorizes the City to require the submittal of data and information, such as expert opinion supported by technical studies, which will enable the City to prepare the Initial Study. If, as a result of the Initial Study, the City determines that there is no substantial evidence that the proposed project may cause a significant effect on the environment, the City prepares a Negative Declaration. However, if the City does not have sufficient evidence to reach this conclusion (for example, based on a lack of documentation regarding the historical resources on the project site), the City is required to prepare an Environmental Impact Report ("EIR") to completely evaluate potential impacts of the proposed project. Thus, as relevant to this project, the primary purpose of the Initial Study (and the primary purpose for the City's request for an historic resource evaluation for the project) is to determine whether or not an EIR will be required to process the application.

Conceptual development plans for the site indicated that two buildings would be demolished as part of future development of the site. The City's internal consultant on historic preservation, Bruce Anderson, undertook a site visit on October 10, 2001 to determine if those buildings were of sufficient character and age to warrant more detailed historic analysis. Subsequently, staff submitted written comments to the applicant (enclosed) regarding the GPA application, by letter dated October 19, 2001, which included staff's determination that an historic resource evaluation is warranted. The letter also identified other analysis required to complete the Initial Study, including an arborist's report. The required arborist report is not at issue in this appeal.

At the time the applicant received the October 19 letter, the applicant was led to believe by staff that it was appropriate for the applicant to engage the historic consultant to do the evaluation if they were qualified (i.e., came from the City's list of qualified consultants). Dr. Marlais made some efforts to engage a consultant but because of timing and/or cost issues, was unsuccessful in obtaining those services. An applicant hiring a consultant to do this type of analysis is not usual city practice. Staff subsequently spoke to two of the consultants on our list who indicated a willingness to undertake the work under contract to the City within a reasonable time frame (a few weeks). However, the applicant would not authorize staff to proceed with the evaluation and put the application "on-hold".

Dr. Marlais and Ms. Marlais subsequently researched some of the history of the site that led the applicant to question some of the initial assessment made by Bruce Anderson regarding the age of the house on the lot. In particular, the applicant found that the home was not "circa 1900" as estimated on October 10, 2001 by Bruce, but 1942 based on building records. At the City Planner's request, the City staff historic consultant made a second visit to the site in May of this year, this time with Woody Minor who has a greater level of expertise on historic architecture and has been the main consultant working on the City's historic inventory. Although Bruce and Woody were only able to view the buildings from the edge of the property (since we did not have the owner's permission to go on site), they agreed that the structures were newer than Bruce had initially thought, probably "circa 1940". The Marlais' research has further indicated that the buildings were owned and used by Olive Hyde, an important personage in the recent history of Mission San Jose.

It should be noted that in 1999 the City undertook a reconnaissance survey of the whole city to identify potentially historic buildings. Virtually all buildings constructed prior to 1955 that could be seen from the public right of way were given one of four potential classifications: those that were likely to be individually historically significant based on architectural features (a "k" or "q" designation); those that contributed to an historic environment but were not individually significant (an "e" designation); and other buildings. Only one of the two buildings on the site was noted by the survey team and it was classified as an "e". When the application for General Plan assessment was received, as noted above, City staff visited the property and noted that the second building on the site had been missed in the initial survey because as the back house is not readily apparent from the public right of way.

On July 18, 2002, the applicant met with the City Manager, Jan Perkins; City Planner Dan Marks and Bruce Anderson to discuss with the City Manager the Planning staff determination that an historic assessment should be completed. At this meeting, Dr. Marlais provided the City with some of the information he had gathered in support of the argument that the house was not historic. He provided building historic residential structures and several other outbuildings. One structure, clearly visible from Mission Boulevard is a circa 1940 Period Revival house. The second residential structure is located towards the rear of the structure and some testimony from people familiar with the development of the property (enclosed). In a letter dated September 10, 2002, the City Manager indicated that based on the information she had, there seemed to be some potential for the property to have historic value, either architecturally or due to its association with Olive Hyde and that the applicant should proceed with an historic evaluation. The September 10 letter essentially confirmed the initial staff determination (from the letter dated October 19, 2001) that an historic assessment is warranted before further processing of the proposed project. It was this letter that prompted the appeal filed on October 2.

**Project and Site Description:** The project site is located within the historic core area of Mission San Jose and is approximately one acre in size. There are numerous mature trees on the site, including one Washingtonia Robusta, three Canary Island Palms, two California Peppers and other ornamental species. An arborist report is also required as part of the environmental review. The property appears to possess two historic residential structures and several other outbuildings. One structure, clearly visible from Mission Boulevard is a circa 1940 Period Revival house. The second residential structure is located towards the rear of the subject property structure and barely visible due to the extensive tree and shrub cover. A second visit to the site revealed more character defining features of the second (rear) structure

including the board and batten siding; a projecting cantilevered gable with a hoist bar; a 14 or 16 light peaked window; a brick chimney; exposed rafters with pointed bargeboards; and two framed openings; one for a window and one now obstructed by plywood. There is also a clerestory row of small casement windows on the structure's west elevation. The second structure exhibits a studied quality and appears to have resulted from conscious or intentional design and may represent the work of an architect. The structure's complex plan suggests the possibility of more than one construction phase. The property's outbuildings are not easily visible and no preliminary assessment of historic integrity was made. The subject property retains character defining features related to the cultural landscape and historic setting that surround it.

**Analysis** The applicant has appealed staff's determination that an historic resource evaluation is required in order to complete the Initial Study for the proposed GPA application. If the appeal is granted, staff would complete the Initial Study based on the information currently available. If the appeal is denied, staff would not complete the Initial Study for the proposed project prior to obtaining funding for the preparation of an historic resource evaluation.

FMC section 1-5102(d) and City Council Resolution 8039 provide that the Planning Commission is the body to hear appeals of issues pertaining to environmental review procedures. Decisions of the Planning Commission are appealable to the City Council pursuant to FMC section 8-23002.

Fundamentally, staff's authority to require an historic evaluation is based on the California Environmental Quality Act ("CEQA"). Public Resources Code Section 21084.1 states

*A project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. For purposes of this section, an historical resource is a resource listed in, or determined to be eligible for listing in the California Register of Historical Resources. Historical resources included in a local register of historical resources as defined in section (k) of Section 5020.1 or deemed significant pursuant to criteria set forth in Section 5024.1 are presumed to be historically or culturally significant . . . unless the preponderance of the evidence demonstrates that the resource is not historically or culturally significant. The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources . . . does not preclude a lead agency from determining whether the resource may be an historical resource for purposes of this section.*

Section 5020.1 lists broad definitions of historic resources including:

*"Historic resource" includes, but is not limited to, any object, building, structure, site, area, place, record or manuscript which is historically or archaeologically significant, or is significant in the architectural, engineering, scientific, economic agricultural, educational, social, political, military or cultural annals of California."*

In July, 1997, Staff recommended, and the Council endorsed, the concept of using the above CEQA section to ensure that potential historic resources could be identified as part of any project subject to discretionary review (e.g., Planned Districts, subdivisions and General Plan amendments) where demolition of the structures was a consequence of the project.

In practice, as part of our CEQA assessment of a proposed development project, staff (and our "internal consultant" to staff, Bruce Anderson) conducts a field visit of the site. Staff determines, based solely on these field visits and other easily available background information, whether there is a structure that is probably older than 60 years of age, and whether there is some basis for believing the property and/or structure possess possible historic significance. CEQA requires staff to determine if there is any *potential* for significant impact when evaluating a potential historic resource. If staff believes there is a reasonable possibility of historic significance, staff requires, as a part of the Initial Study, an historical evaluation be conducted by a qualified consultant to evaluate the historic significance of the property. If there is some historic significance, mitigations may be available to reduce the impact on that historic property to a less than

significant level. If the impact remains significant after all feasible mitigations are applied, then staff is forced to require the preparation of an Environmental Impact Report.

Staff believes there is some potential that the property in question may have some cultural or historic significance. Staff believes one or more of the buildings in question are over 60 years of age and has some architectural merit. Perhaps equally importantly, they are associated with an important personage in the recent history of Mission San Jose. Neither of these determinations in themselves makes the property historically significant. Staff has indicated that it does not feel it can come to a conclusion about potential historic significance based on the information available. Without sufficient information about historic significance, staff has been unable to make a determination that the demolition of those buildings would not constitute a significant adverse impact on an historic resource. Accordingly, staff cannot make a determination that there is no potential for a significant adverse impact from the proposed project (the General Plan Amendment). Thus, staff cannot complete the Initial Study and recommend a Negative Declaration.

**Appeal:** The appellant has presented information indicating that the subject buildings were built in the early 1940's and affidavits from people familiar with the site and the construction of the buildings. In the appellant's view, sufficient information has been generated to conclude that the subject properties are clearly not historic buildings and that further historic evaluation is therefore unnecessary.

**Conclusion:** Should the Commission agree with the appellant and support his appeal, then staff will complete the Initial Study with the information we have available and proceed with the preparation of the appropriate environmental documentation. Should the Commission deny the appeal, then the applicant will be required to provide funds for an historic evaluation. Alternatively, staff would proceed to recommend that the General Plan Amendment be denied due to lack of an environmental determination.

**Response from Agencies and Organizations:** None

**Enclosures:** Appeal letter, September 30, 2002

Historic Information from Dr. Marlais

Staff Correspondence

**Recommended Actions:**

1. Deny appeal.